IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL **[LODGING]** NO.413 OF 2007
IN
NOTICE OF MOTION NO.2185 OF 2005
IN
SUIT NO.1656 OF 2005

Pankaj K. Gupta .... Appellant
Vs.
Mrs. Swaran K. Gupta .... Respondent

Shri Vijay Kothari i/b M/s. Deven Dwarkadas & Partners for the Appellant.

Shri Kamal Khatta i/b M/s. J.A. Shah & Associates for the Respondent.

CORAM: R.M.S. KHANDEPARKAR & D.G. KARNIK, JJ.

DATED: MAY 03, 2007

P.C:

1. Heard. The appellant challenges the order dated 28-3-2007 passed in Notice of Motion No.2185 of 2005 in Suit No.1656 of 2005.

2. By the impugned order, the learned single Judge having found that the appellant has not complied with the earlier order dated 21-7-2005 in Notice of Motion No.1814 of 2005, has directed the appointment of Court Receiver in relation to the suit premises.

3. The order dated 21-7-2005 was to the effect that:

"(a) Pending the hearing and final disposal of suit, defendant, his servants, agents or any persons claiming through him are restrained from in any manner obstructing the use, occupation, possession and enjoyment of plaintiff in respect of suit premises viz., Flat No.6, Pankaj Mahal (earlier known as Gupta Mahal), Dinshaw Wachha Road, Churchgate, Mumbai 400 020 admeasuring 1425 sft.

(b) However, this will not prevent either the defendant or the other son Kamal Gupta from entering suit premises and/or remaining/ residing therein but without in any manner interfering with and obstructing plaintiff’s exclusive possession of the entire premises i.e. 1425 sq.ft.

(c) Since I have passed an order restraining defendant from obstructing use, occupation as well as possession of plaintiffs in respect of suit premises viz., Flat No.6, admeasuring 1425 sft. situate in building Pankaj Mahal,

> needless to state that any obstruction presently placed in such use and occupation and enjoyment of flat shall be removed and the entire flat is made available for plaintiff’s use."

4. It is not in dispute that some partitions were erected in the suit flat whereby two of the bed-rooms of the suit flat of the respondent/plaintiff were sought to be segregated from the remaining portion in the use of the respondent. On account of the same, the order dated 21-7-2005 directed removal of the partitions which were placed/erected in the said flat and which were obstructing the use of the two bed-rooms and the passage of the suit flat by the respondent/plaintiff. The learned counsel appearing for the appellant, on taking instructions from the appellant present in the Court, clearly conceded that those obstructions have not yet been removed. Apparently therefore, there has been no compliance of the order dated 21-7-2005 by the appellant and prima facie the appellant is in contempt of Court as the mandatory order referred to above has not been complied with by the appellant till this day. It is not in dispute that the appellant has not challenged the order dated 21-7-2005 and the said order has become final during the pendency of the suit.

5. Since the appellant has not complied with the said order of this Court, the appellant is liable to proceeded for contempt of Court. We hereby, therefore, direct issuance of notice to the appellant as to why the appellant should not be proceeded against for non-compliance of the order dated 21-7-2005 in Notice of Motion No.1814 of 2005 whereby the appellant was required to remove the obstructions erected in the suit flat which were obstructing the use of the two bed-rooms and the passage by the respondent/plaintiff in spite of the fact that there was no dispute that those premises formed part of the flat of the respondent/plaintiff. Based on this order, the Registry to register contempt proceedings separately and to issue notice to the appellant in this regard and thereafter place the matter before the Bench, dealing with the proceedings for contempt of Court for non-compliance of the order of the Court, for further proceedings.

6. Since the appellant has not complied with the order dated 21-7-2005 and the appellant prima facie being in contempt of Court, question of entertaining this appeal at the instance of the appellant, unless the appellant purges the contempt, does not arise at all. While reserving liberty to the appellant to challenge the impugned order in case the appellant proves to be innocent in the contempt proceedings, the appeal, at

this stage, is disposed of.

(D.G.Karnik, J.) (R.M.S.Khandeparkar, J.)

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